

STATE OF MICHIGAN
COURT OF APPEALS

DIELLI, INC.,

Plaintiff/Counter-Defendant-
Appellee,

v

RON THOMAS REISS,

Defendant/Counter-Plaintiff-
Appellee,

and

CHAD REISS,

Intervening Defendant,

and

DIELLI HUSEN and JOHN PLOUCHA,

Appellants.

UNPUBLISHED

August 21, 2008

No. 278603

Macomb Circuit Court

LC No. 2004-003410-CK

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Appellants appeal as of right from the trial court's order terminating a receivership. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This action arises out of a complaint filed in 2004 by plaintiff against defendant, one of plaintiff's shareholders. The complaint alleged, among other things, that defendant illegally converted corporate assets. On October 14, 2004, a receiver was appointed to oversee the distribution of plaintiff's assets. Defendant, intervening defendant, and appellants were the sole shareholders of plaintiff.

In July 2006, appellants, although non-parties in the proceedings below, filed a motion to compel a detailed final accounting, for execution of transfer documents, and to wind up the corporation. The trial court issued an order directing the receiver to provide the parties with all

bills and accounts necessary to conclude the receivership and to notice a hearing on the final accounts. In November 2006, intervening defendant filed a second motion to terminate the receivership. The receiver agreed to terminate the receivership and asked for payment of fees and a release from the parties. The receiver provided documentation of the sale of assets and of fees.

At the hearing on the motion to terminate the receivership, defendant and intervening defendant stated they had no objection to the final accounting of the receiver: “[W]e are satisfied as to the questions that we asked that we have received satisfactory and true answers. We simply want this receivership brought to an end.”

Appellants, despite being non-parties to the action, argued against terminating the receivership, stating:

[A]fter some interim distributions had been made, it turns out that there was some gross accounting error and there wasn’t going to be money to return. Since that time, Judge, there’s been a number of settlement documents signed, one of which was signed by the receiver. There’s been assignment of assets, there’s been a number of questions posed by . . . my office that have not been responded to or answered in satisfaction.

Appellants also questioned whether certain expenses were reasonable and alleged that the receiver had filed an improper tax return.

With regard to the expenses, the receiver explained to the trial court that an accounting error had been made because he believed there was more cash on hand than there was. The receiver also informed the court that he had received correspondence from appellants in which they stated that they no longer wanted to participate in the lawsuit or had an interest in the corporation and they only wanted copies of tax returns. Finally, the receiver opined that the receivership should be closed and that any outstanding accounting issues had been caused by appellants and such issues should and would best be resolved by them.

In January 2007, the trial court terminated the receivership, stating that everyone “had ample time” to resolve their concerns, given that the action was filed in 2004. The order specified that the individual shareholders would be responsible for resolving those matters, including tax issues, incidental to winding up the corporation.

Appellants thereafter moved for reconsideration, alleging that the trial court committed error in failing to conduct a hearing regarding the expenditures by the receiver. They further alleged that the receivership had been terminated prematurely, before its purpose was achieved. The trial court denied the motion.

On appeal, appellants assert that the receiver failed to make a proper accounting and to effectuate an orderly and expeditious wind-up of the receivership and, therefore, the trial court erred by prematurely terminating the receivership. We disagree.

This Court reviews for an abuse of discretion a trial court’s decision to discharge a receiver and to terminate a receivership. *Singer v Goff*, 334 Mich 163, 167; 54 NW2d 290

(1952); see also, generally, *In re Newbrough*, 254 Mich 170; 236 NW 233 (1931). The abuse of discretion standard recognizes that “there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome.” *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006), quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Under this standard, “[a]n abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes.” *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

A court may terminate a receivership “whenever it appears to be to the best interest of the debtor, the creditors, and others interested.” MCL 600.2926. Furthermore, “receiverships should be wound up within a reasonable time,” *Gauss v Central West Cas Co*, 289 Mich 15, 22; 286 NW 139 (1939), and “as quickly as it can be accomplished without injury to the creditors.” *Detroit Trust Co v Detroit City Service Co*, 262 Mich 14, 50; 247 NW 76 (1933).

A receiver derives his or her authority from statutes and court rules and from the order of appointment and specific orders that the appointing court may thereafter make. *Woodliff v Frechette*, 254 Mich 328, 329; 236 NW 799 (1931). The trial court’s order appointing the receiver in this case directed that “the Receiver is hereby granted all powers and authority conferred by statute and case law . . . for the purpose of effectuating the orderly dissolution of the company and disposition of its assets and/or as further directed by this Court.” The order further stated that the “Receiver shall oversee the operation of all Subway franchise stores pending their distribution [and] shall take such steps as the Receiver deems necessary to maximize the sale price of the assets of Dielli, Inc.”

The receiver has accomplished the directives set forth in the trial court’s order appointing the receiver and, thus, the receivership is no longer necessary. Specifically, the assets at issue have been transferred, free of any liens, by the receiver. The receiver has also provided an accounting outlining his distributions and expenditures. It was not outside the principled range of outcomes for the trial court to decide that the transfer of the assets in the receivership concluded the need for the receivership.

Moreover, appellants charge that the final accounting contained errors and/or shortcomings. Whether items such as accounts for expenditures are accurate is within the discretion of the trial court. *Kurrasch v Kunze Realty Co*, 296 Mich 122, 124; 295 NW 583 (1941); see also *Corell v Reliance Corp*, 295 Mich 45, 51; 294 NW 92 (1940) (discussing, in general, the presumption of validity in receiverships). Here, the trial court was provided the accounting in advance and specifically discussed it with the receiver and was satisfied that the accounting was sufficient and accurate. It was proper for the trial court to accept the accounting as reasonable. The court’s decision did not constitute an abuse of discretion.

Because the assets of the corporation have been transferred, the receiver is no longer necessary to effectuate compliance with the order appointing the receiver. Accordingly, the trial court did not abuse its discretion by terminating the receivership.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto